

# DIVISION OF ALCOHOL AND TOBACCO CONTROL

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## **ANNUAL REPORT TO THE GENERAL ASSEMBLY ON TOBACCO ENFORCEMENT January 1, 2005 thru December 31, 2005**

The Division of Alcohol and Tobacco gained responsibility for enforcement of tobacco laws on August 28, 2001, with the passage of HB 381. The Division is required to submit an annual report to the General Assembly on the effectiveness of Sections 407.925 through 407.934 in reducing tobacco possession by minors and the tobacco enforcement activities of the Division.

### **Tobacco Compliance Check Investigations**

The Division of Alcohol and Tobacco Control continues to work diligently in its efforts to enforce the provisions of Sections 407.924 through 407.934, RSMo, and the Rules and Regulations of the Supervisor of Alcohol and Tobacco Control 11 CSR 70-3. The Division is currently the only agency charged with the responsibility to enforce the tobacco control laws of the State of Missouri. In previous years, the enforcement of tobacco laws by the Division was accomplished with surveillance type investigations. This type of enforcement does not easily measure the effectiveness of the enforcement. Compliance checks have been recognized as an excellent method to attack the problems associated with the unlawful sale or distribution of tobacco products. In March 2005 the Division implemented a Compliance Check Program.

The State Supervisor established mandatory guidelines for the use of minors in investigations by the state, county, municipal, or other local authorities in 11 CSR 70-3. These regulations became effective February 28, 2002. The Division can take action against any non-compliant vendor if the mandatory guidelines are followed. The mandatory guideline regulations do not create a local preemption, however, the guidelines must be followed for the Supervisor to take action against noncompliant vendors.

The Division of Alcohol and Tobacco Control requires each of its three Districts to complete twenty compliance checks a month. Should the retailer be in non-compliance and cited for violation of Sale or Supply of Tobacco Products to a minor, a second compliance check or re-inspection will be done at that retail establishment within 60 days to determine compliance. The re-inspection check is in addition to the twenty compliance checks scheduled for the month.

Reflected below are the statistics resulting from the Compliance Checks by the Division of Alcohol and Tobacco Control since March 1, 2005:

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<http://www.atc.dps.mo.gov>

<b>NUMBER OF TOBACCO COMPLIANCE CHECKS</b>		
Compliant Retailers	140	54% Compliant
Non-Compliant Retailers	117	46% Non-Compliant
<b>Total Number of Retailers Checked</b>	<b>257</b>	
<b>Total Number of Counties Checked</b>	<b>26</b>	
<b>Dispositions of Administrative Violations of Sale to Minor</b>		
Retailers Exempt from Penalties	36	
Retailers Receiving Letters of Reprimand	43	
Retailers Pending Dispositions	36	

<b>Statistics for Sales of Tobacco Products to a Minor</b>	<b>Arrests</b>
Female over the age of 30 – sale to a minor	55
Females under the age of 30 – sale to a minor	24
Males over the age of 30 – sale to a minor	19
Males under the age of 30 – sale to a minor	20
<b>Total Arrests (Section 407.931.3)</b>	<b>117</b>

The tobacco retailers that were non-compliant were cited for the sale of tobacco products to minors and sent letters indicating they have violated the tobacco law. All first offense violations allow retailers to verify they have had Division approved training on the tobacco laws. The law states that training must be in place prior to the violation and the retailer must verify that the employee has attended training. The retailers exempt from reprimands were based upon the verification that an approved training on the tobacco laws was in place or the employee was terminated from employment. Current law allows a tobacco retailer up to five violations before the Division of Alcohol and Tobacco Control can order a suspension.

In addition, The Division meets with prosecutors to encourage aggressive and consistent prosecution of tobacco-related offenses. As a result, prosecutors are showing an increased willingness to prosecute tobacco-related offenses. Continued joint cooperation between the Division's enforcement personnel and the prosecutors will ensure the success of the tobacco enforcement program. Following are statistics on the disposition of the above sale of tobacco products to minor charges:

- **52 - Guilty dispositions for the sale of tobacco products to minors**
- **3 - Warrants issued for failure to appear on the charge of sale of tobacco products to minors**

The dispositions on many of the charges are unknown at this time as the County Prosecutors and or Circuit Clerks do not always send dispositions to the Division. The Division is attempting to determine dispositions on all charges.

### Enforcement Activity / Minors

The Agents perform alcohol and tobacco enforcement in conjunction. Any time an Agent works in the field, he investigates for both alcohol and tobacco violations. With regard to other minor tobacco-related offenses such as Possession or Attempt to Purchase Tobacco Products by a Minor, the following information is the Division's enforcement activity:

<b>Possession/Attempt to Purchase Tobacco by a Minor (407.933.1)</b>		
	<b>Female</b>	<b>Male</b>
Age 12	0	1
Age 13	0	0
Age 14	4	3
Age 15	13	10
Age 16	14	12
Age 17	20	33
<b>Total Arrests – 110</b>	<b>51</b>	<b>59</b>
<b>Misrepresentation of Age to Purchase Tobacco (407.933.2) - No Arrests</b>		

#### Dispositions of Cases:

- **17 - Guilty Dispositions for the Possession/Attempt to Purchase Tobacco by a Minor**
- **4 - Cases Dismissed by the Prosecutor**
- **3 - Warrants issued for Failure to Appear on the Charge of Possession/Attempt to Purchase Tobacco by a Minor**

As noted above, the dispositions on many of the arrests are unknown as the County Prosecutors and or Circuit Clerks have not sent dispositions to the Division at this time.

### Divisions Other Logged Tobacco Activity

The Division of Alcohol and Tobacco Control has limited resources for law enforcement of strictly youth access to tobacco laws. The Division receives \$134,664 from the Healthy Family Trust Funds for tobacco enforcement. This funds one tobacco program manager and two clerical employees. The Agents doing the Field Enforcement are funded through General Revenue. The Division performs Routine Inspections, Routine Investigations and Special Investigations of vendors/retailers, along with Server Training. It should again be noted that the numbers reflected on these activities are joint tobacco and alcohol enforcement. The majority of retailers that sell alcohol also sell tobacco products. This allows the Agents to complete both inspections at the same time and allows quality contact with the retailers to answer questions regarding tobacco issues along with alcohol concerns. Following are alcohol and tobacco enforcement activities for the year:

<b>Alcohol and Tobacco Enforcement Activities – January – December 2005</b>	
<b>Routine Investigations</b>	<b>3,167</b>
<b>Routine Inspections</b>	<b>3,627</b>
<b>Special Investigations</b>	<b>2,356</b>
<b>Public Relations Contacts</b>	<b>4,031</b>
<b>Server Training</b>	<b>211</b>
<b>Number of Individuals Trained</b>	<b>3,325</b>

The Division was able to identify over 7,500 vendors of tobacco products in the state. This was accomplished by personal visits to the vendors business, working with the Department of Mental Health, Division of Alcohol and Drug Abuse, and the Missouri Department of Revenue. These lists are incomplete because businesses are not required to register as a seller of tobacco products. It is difficult to identify all retailers and maintain an accurate list when licensing or registration is not statutorily mandated.

### **Synar Amendment**

The Center for Substance Abuse Prevention (CSAP) oversees implementation of the Synar Amendment, which requires States to have laws in place prohibiting the sale and distribution of tobacco products to persons under 18 and to enforce those laws effectively. States are to achieve a maximum sales-to-minors rate of not greater than 20 percent. Missouri was awarded \$26,384,412 in FFY05 through the Substance Abuse Prevention and Treatment (SAPT) Block Grant. If the state fails to meet the Synar regulations, it stands to lose 40% of its SAPT funding.

The Department of Mental Health, Division of Alcohol and Drug Abuse was given the responsibility for enforcing Synar Regulations. The Division of Alcohol and Tobacco Control was given the responsibility of enforcing the Missouri Statutory Tobacco Laws.

### **Conclusion**

In closing, we continue to participate as a member of the Missouri Comprehensive Tobacco Use Prevention Steering Committee. This committee has completed a strategic plan that will guide the future of tobacco related issues in regards to health. The Division of Alcohol and Tobacco Control is the enforcement component of the overall approach to the comprehensive tobacco program. The use of compliance checks is an enforcement tool the Division can use to determine noncompliant tobacco retailers and serves as a deterrent for violators. The further expansion of compliance checks will logically lower the percentage of non-compliant tobacco vendors, thereby allowing the state to achieve a maximum sales-to-minors rate of not greater than 20 percent and protecting the SAPT Block Funding Grant.